

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
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Interim Guidelines

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Statements on proposed Federal actions affecting the environment

1. Purpose. This memorandum provides interim guidelines to Federal departments, agencies and establishments for preparing detailed environmental statements on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, as required by Section 102(2)(C) of the National Environmental Policy Act (P.L. 91-190) (hereafter "the Act"). Underlying the preparation of such environmental statements is the mandate of both the Act and Executive Order 11514 (35 Fed. Reg. 4247) of March 5, 1970 that all Federal agencies, to the fullest extent possible, direct their policies, plans and programs so as to meet national environmental goals.

2. Policy. Before undertaking major action or recommending or making a favorable report on legislation that significantly affects the environment, Federal agencies will, in consultation with other appropriate Federal, State and local agencies, assess in detail the potential environmental impact in order that adverse affects are avoided, and environmental quality is restored or enhanced, to the fullest extent practicable. In particular, alternative actions that will minimize adverse impact should be explored and both the long- and short-range implications to man, his physical and social surroundings, and to nature, should be evaluated in order to avoid to the fullest extent practicable undesirable consequences for the environment.

3. Agency and BOB Procedures

(a) Pursuant to Section 2(f) of Executive Order 11514, the heads of Federal agencies have been directed to proceed with measures required by section 102(2)(C) of the Act. Consequently, each agency will establish no later than June 1, 1970 its own formal procedures for (1) identifying those agency actions requiring environmental statements, (2) obtaining information required in their preparation, (3) designating the officials who are to be responsible for the statements, (4) consulting with and taking account of the comments of appropriate Federal, State and local agencies and (5) meeting the requirements of section 2(b) of Executive Order 11514 for providing timely public information on Federal plans and programs with environmental impact. These procedures should be consonant with the guidelines contained herein. Each agency should file seven (7) copies of all such procedures with the Council on Environmental Quality, which will provide advice to agencies in the preparation of their procedures and guidance on the application and interpretation of the Council's guidelines.

(b) Each Federal agency should consult, with the assistance of the Council on Environmental Quality if desired, with other appropriate Federal agencies in the development of the above procedures so as to achieve consistency in dealing with similar activities and to assure effective coordination among agencies in their review of proposed activities.

(c) It is imperative that existing mechanisms for obtaining the views of Federal, State and local agencies on proposed Federal actions be utilized to the extent practicable in dealing with environmental matters. The Bureau of the Budget will issue instructions, as necessary, to take full advantage of existing mechanisms (relating to procedures for handling legislation, preparation of budgetary material, new policies and procedures, water resource and other projects, etc.).

4. Federal Agencies Included. Section 102(2)(C) applies to all agencies of the Federal Government with respect to recommendations or reports on proposals for (i) legislation and (ii) other major Federal actions significantly affecting the quality of the human environment. The phrase "to the fullest extent possible" in Section 102(2)(C) is meant to make clear that each agency of the Federal Government shall comply with the requirement unless existing law applicable to the agency's operations expressly prohibits or makes compliance impossible. (Sec. 105 of the Act provides that "The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.")

5. Actions Included. The following criteria will be employed by agencies in deciding whether a proposed action requires the preparation of an environmental statement:

(a) "Actions" include but are not limited to:

(i) recommendations or reports relating to legislation and appropriations;

(ii) projects and continuing activities

--directly undertaken by Federal agencies

--supported in whole or in part through Federal contracts, grants, subsidies, loans, or other forms of funding assistance

--involving a Federal lease, permit, license, certificate or other entitlement for use;

(iii) policy--and procedure-making.

(b) The statutory clause "major Federal actions significantly affecting the quality of the human environment" is to be construed by agencies with a view to the overall, cumulative impact of the action proposed (and of

further actions contemplated). Such actions may be localized in their impact, but if there is potential that the environment may be significantly affected, the statement is to be prepared. Proposed actions the environmental impact of which is likely to be highly controversial should be covered in all cases. In considering what constitutes major action significantly affecting the environment, agencies should bear in mind that the effect of many Federal decisions about a project or complex of projects can be individually limited but cumulatively considerable. This can occur when one or more agencies over a period of years puts into a project individually minor but collectively major resources, when one decision involving a limited amount of money is a precedent for action in much larger cases or represents a decision in principle about a future major course of action, or when several government agencies individually make decisions about partial aspects of a major action. The lead agency should prepare an environmental statement if it is reasonable to anticipate a cumulatively significant impact on the environment from the Federal action.

(c) Section 101(b) of the Act indicates the broad range of aspects of the environment to be surveyed in any assessment of significant effect. The Act also indicates that adverse significant effects include those that degrade the quality of the environment, curtail the range of beneficial uses of the environment or serve short-term, to the disadvantage of long-term, environmental goals. Significant effects can also include actions which may have both beneficial and detrimental effects, even if, on balance, the agency believes that the effect will be beneficial. Significant adverse effects on the quality of the human environment include both those that directly affect human beings and those that indirectly affect human beings through adverse effects on the environment.

(d) Because of the Act's legislative history, the regulatory activities of Federal environmental protection agencies (e.g., the Federal Water Quality Administration of the Department of the Interior and the National Air Pollution Control Administration of the Department of Health, Education, and Welfare) are not deemed actions which require the preparation of an environmental statement under Section 102(2)(C) of the Act.

6. Recommendations or Reports on Proposals for Legislation. The requirement for following the Section 102(2)(C) procedure as elaborated in these guidelines applies to both (i) agency recommendations on their own proposals for legislation and (ii) agency reports on legislation initiated elsewhere. (In the latter case only the agency which has primary responsibility for the subject matter involved will prepare an environmental statement). The Bureau of the Budget will supplement these general guidelines with specific instructions relating to the way in which the Section 102(2)(C) procedure fits into its legislative clearance process.

(a) The following points are to be covered:

(i) the probable impact of the proposed action on the environment, including impact on ecological systems such as wild life, fish and marine life. Both primary and secondary significant consequences for the environment should be included in the analysis. For example, the implications, if any, of the action for population distribution or concentration should be estimated and an assessment made of the effect of any possible change in population patterns upon the resource base, including land use, water, and public services, of the area in question.

(ii) any probable adverse environmental effects which cannot be avoided (such as water or air pollution, damage to life systems, urban congestion, threats to health or other consequences adverse to the environmental goals set forth in Section 101(b) of P.L. 91-190.

(iii) alternatives to the proposed action (Sec. 102(2)(D) of the Act requires the responsible agency to "study, develop and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources"). A rigorous exploration and objective evaluation of alternative actions that might avoid some or all of the adverse environmental effects is essential. Sufficient analysis of such alternatives and their costs and impact on the environment should accompany the proposed action through the agency review process in order not to foreclose prematurely options which might have less detrimental effects.

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity. This in essence requires the agency to assess the action for cumulative and long-term effects from the perspective that each generation is trustee of the environment for succeeding generations.

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented. This requires the agency to identify the extent to which the action curtails the range of beneficial uses of the environment.

(vi) where appropriate, a discussion of problems and objections raised by other Federal agencies and State and local entities in the review process and the disposition of the issues involved. (This section may be added at the end of the review process in the final text of the environmental statement.)

(b) With respect to water quality aspects of the proposed action which have been previously certified by the appropriate State or interstate organization as being in substantial compliance with applicable water quality standards, mere reference to the previous certification is sufficient.

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(c) Each environmental statement should be prepared in accordance with the precept in Section 102(2)(A) of the Act that all agencies of the Federal Government "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and decision making which may have an impact on man's environment."

8. Federal Agencies to be Consulted in Connection with Preparation of Environmental Statement. The Federal agencies to be consulted in connection with preparation of environmental statements are those which have "jurisdiction by law or special expertise with respect to any environmental impact involved" or "which are authorized to develop and enforce environmental standards". These Federal agencies include components of (depending on the aspect or aspects of the environment involved):

Department of Agriculture

Department of Commerce

Department of Defense

Department of Health, Education and Welfare

Department of Housing and Urban Development

Department of the Interior

Department of Transportation

Atomic Energy Commission

For actions specially affecting the environment of their regional jurisdictions, the following Federal agencies are also to be consulted:

Tennessee Valley Authority

Appalachian Regional Commission

Agencies obtaining comment should determine which one or more of the above listed agencies are appropriate to consult. It is recommended that the above listed Departments establish contact points for providing comments and that Departments from which comment is solicited coordinate and consolidate the comments of their component entities. The requirement in Section 102(2)(C) to obtain comment from Federal agencies having jurisdiction or special expertise is in addition to any specific statutory obligation of any Federal agency to coordinate or consult with any other Federal or State agency. Agencies seeking comment may establish time limits of not less than thirty days for reply, after which it may be presumed the agency consulted has no comment to make.

9. State and Local Review. Where no public hearing has been held on the proposed action, which the appropriate State or local review has been invited, and where review of the proposed action by State and local agencies authorized to develop and enforce environmental standards is relevant, such State and local review shall be provided for as follows:

(a) For direct Federal development projects and projects assisted under programs listed in Attachment D of the Bureau of the Budget Circular No. A-95, review by State and local governments will be through procedures set forth under Part 1 of Circular No. A-95.

(b) State and local review of agency procedures, regulations, and policies for the administration of Federal programs of assistance to State and local governments will be conducted pursuant to procedures established by Bureau of the Budget Circular No. A-85.

(c) Where these procedures are not appropriate and where the proposed action affects matters within their jurisdiction, review of the proposed action by State and local agencies authorized to develop and enforce environmental standards and their comments on the draft environmental statement may be obtained directly or by publication of a summary notice in the Federal Register (with a copy of the environmental statement and comments of Federal agencies thereon to be supplied on request). The notice in the Federal Register may specify that comments of the relevant State and local agencies must be submitted within 60 days of publication of the notice.

10. Use of Statements in Agency Review Processes; Distribution to Council on Environmental Quality.

(a) Agencies will need to identify at what stage or stages of a series of actions relating to a particular matter the environmental statement procedures of this directive will be applied. It will often be necessary to use the procedures both in the development of a national program and in the review of proposed projects within the national program. However, where a grant-in-aid program does not entail prior approval by Federal agencies of specific projects, the view of Federal, State and local agencies in the legislative and possibly appropriation, process may have to suffice. The principle to be applied is to obtain views of other agencies at the earliest feasible time in the development of program and project proposals. Care should be exercised so as not to duplicate the clearance process, but when actions being considered differ significantly from those that have already been reviewed an environmental statement should be provided.

(b) Seven (7) copies of draft environmental statements (when prepared), seven (7) copies of all comments received thereon (when received), and seven (7) copies of the final text of environmental statements should be supplied to the Council on Environmental Quality in the Executive Office of the President (this will serve as making environmental statements available

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to the President). It is important that draft environmental statements be prepared and circulated for comment and furnished to the Council early enough in the agency review process before an action is taken in order to permit meaningful consideration of the environmental issues involved.

11. Application of Section 102(2)(C) Procedure to Existing Projects and Programs. To the fullest extent possible the Section 102(2)(C) procedure should be applied to further major Federal actions having a significant effect on the environment even though they arise from projects or programs initiated prior to enactment of P.L. 91-190 on January 1, 1970. Where it is not practicable to reassess the basic course of action, it is still important that further incremental major actions be shaped so as to minimize adverse environmental consequences. It is also important in further action that account be taken of environmental consequences not fully evaluated at the outset of the project or program.

12. Availability of Environmental Statements and Comments to Public. The agency which prepared the environmental statement is responsible for making such statement and the comments received available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. Sec. 552).

13. Review of Existing Authority, Policies and Procedures in Light of National Environmental Policy Act. Pursuant to Section 103 of the Act and Section 2(d) of Executive Order 11514, all agencies, as soon as possible, shall review their present statutory authority, administrative regulations, and current policies and procedures, including those relating to loans, grants, contracts, leases, licenses, certificates and permits, for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of the Act. After such review each agency shall report to the Council on Environmental Quality not later than September 1, 1970 the results of such review and their proposals to bring their authority and policies into conformity with the intent, purposes and procedures set forth in the Act.

14. Supplementary Guidelines; Evaluation of Procedures.

(a) The Council on Environmental Quality after examining environmental statements and agency procedures with respect to such statements will issue such supplements to these guidelines as are necessary.

(b) Agencies will assess their experience in the implementation of the Section 102(2)(C) provisions of the Act and in conforming with these guidelines and report thereon to the Council on Environmental Quality by December 1, 1970. Such reports should include an identification of problem areas and suggestions for revision or clarification of these guidelines to achieve effective coordination of views on environmental aspects (and alternatives, where appropriate) of proposed actions without imposing unproductive administrative procedures.